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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,615

03/29/2004

Heiner Ophardt

P41303

9083

22839

7590

06/19/2006

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EXAMINER

TYLER, STEPHANIE E

ART UNIT

PAPER NUMBER

3754

DATE MAILED: 06/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/810,615	Applicant(s) OPHARDT, HEINER	
	Examiner Stephanie E. Tyler	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 1-23, 25-34, 55 and 60-75 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-53, 58, 59 is/are allowed.
- 6) ☒ Claim(s) 24, 54, 56 and 57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/29/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species: I. Figures 1-3

II. Figures 4,5

III. Figure 6

IV. Figures 7,8

V. Figure 9

VI. Figures 10-12

VII. Figures 13,14

VIII. Figures 15-21

VIII. Figures 22-30

X. Figure 31

XI. Figures 32-42

XII. Figures 43-48

The species are independent or distinct because some of the different species can be operated by manual activation or by a motor driven pump.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims

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readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

2. During a telephone conversation with Brant Latham on February 7, 2006 a provisional election was made without traverse to prosecute the invention of species 9, claims 24, 35-54,56-59. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-23,25-34,55,60-75 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one

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skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The elected embodiment, Figures 22-30 describe the vacuum relief device as the cap (204) and neck (208) functioning as a "vacuum relief device". See bottom of page 26 of the specification. With such a vague description, it is unclear as to how such functions as a "vacuum relief device". Is the vacuum relief between the threaded connection and the neck and chamber? How does the "vacuum relief device" permit air to enter into the reservoir? Is the "vacuum relief device" the arrangement of the liquid tube outlet being disposed below the actual dispensing tube/outlet 38? While the prior art setting may be mentioned in general terms, the essential novelty, the essence of the invention, must be described in such details, and techniques, as to enable those persons skilled in the art to make and utilize the invention. Specific operative embodiments or examples of the invention must be set forth.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The claims 24,54,56,57 are replete with informalities too numerous to mention specifically. The following noted informalities are merely exemplary thereof: Claim 24 is vague and indefinite because "a liquid outlet of line 3 appears to be a double inclusion of " a dispensing outlet".

The "enclose chamber" of claim 24, line 10, appear to be a double inclusion of the "enclosed liquid reservoir" of line 1.

The "dispensing outlet", "liquid outlet" of claim 24, line 3 and the arrangement of such in the chamber/liquid container reservoir, appears to be a double inclusion of the "vacuum relief device".

Claim 54 is vague and indefinite because it is incomplete. Note that the 3rd last line states that, "an impeller rotatably received therein", but such faults to state what or where "therein" is.

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6. Claim 54 is objected to because of the following informalities: note the language in claim 54; lines 14-21 are inaccurate because dispensing is not occurring but is stopping. Appropriate correction is required.

Allowable Subject Matter

7. Claims 35-53,58,59 are allowed.

Conclusion

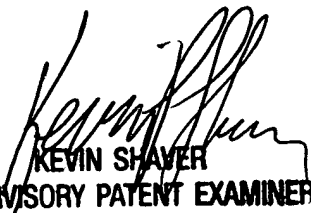
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie E. Tyler whose telephone number is 571-272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SET


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